

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2002-206

JUNE 25, 2002

NYNEX LONG DISTANCE COMPANY
d/b/a Verizon Enterprise Solutions
Petition for Finding of Public Convenience
And Necessity to Provide Service as an
Interexchange Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
SERVICE AND APPROVING
SCHEDULE OF RATES AND
TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants NYNEX LONG DISTANCE COMPANY, d/b/a Verizon Enterprise Solutions (NYNEX Long Distance or Company) the authority to provide facilities-based interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules, Original Pages 18, and 20-107 as filed on April 12, 2002; and Original Page 19, as filed on June 17, 2002. Pursuant to Chapter 280, §§ 11 and 12, we exempt NYNEX Long Distance from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On April 12, 2002, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, NYNEX Long Distance applied for authority to provide interexchange service in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting NYNEX Long Distance the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

NYNEX Long Distance's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

NYNEX Long Distance is an affiliated interest of Verizon New England, d/b/a Verizon Maine. Verizon Maine provides intrastate interexchange service to a large number of customers in Maine. To the extent that NYNEX Long Distance provides intrastate interexchange service to any of these customers, Verizon Maine will lose retail toll revenue, although it will gain wholesale access revenue. NYNEX Long Distance states that it will be providing intrastate services only incidentally, i.e., it does not presently intend to market intrastate services actively to Maine customers, but will provide them on request to customers who subscribe to NYNEX Long Distance's interstate services. Nevertheless, the diversion of services to NYNEX Long Distance could have an impact on Verizon Maine ratepayers. There may be circumstances in the future under which it will be necessary for the Commission to examine Verizon's revenue requirement and revenues. Accordingly, Commission approval of the Petition for authority to provide intrastate interexchange service by NYNEX Long Distance shall neither expand nor curtail the Commission's ratemaking powers to consider or adopt any ratemaking adjustment for Verizon Maine.

II. SERVICE TERRITORY

NYNEX Long Distance has requested authority to provide interexchange service throughout the state. We grant that authority.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by NYNEX Long Distance to go into effect. NYNEX Long Distance used in part the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in NYNEX Long Distance's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of NYNEX Long Distance's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by NYNEX Long Distance to go into effect.

IV. PAYMENT OF ACCESS CHARGES

The Commission has granted authority to NYNEX Long Distance to provide interexchange service both as a facilities-based carrier and as a switchless reseller.¹ Our approval of NYNEX Long Distance's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. To the extent that NYNEX Long Distance provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers. Whenever NYNEX Long Distance begins to provide facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, NYNEX Long Distance must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. NYNEX Long Distance shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, NYNEX Long Distance is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, NYNEX Long Distance is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because NYNEX Long Distance's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, as required by Chapter 280, § 11(A), NYNEX Long Distance must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, its annual intrastate minutes of use for the purpose of determining its regulatory assessment, and such other information requested by the Commission.² If NYNEX Long Distance resells service to other facilities-based or switchless telephone service providers, the Company must maintain its records in a way that it is able to separately identify those sales. Pursuant to Chapter 280, § 11(B),

¹We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a facilities-based interexchange carrier. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

The exemption from 35-A M.R.S.A. §§ 707 and 708, provided by Chapter 280, does not apply to Verizon New England Inc., d/b/a Verizon Maine, which is an affiliated interest of NYNEX Long Distance. Verizon New England Inc., d/b/a Verizon Maine must continue to comply with the requirements of sections 707 and 708 (subject to the exemptions contained in Docket No. 86-224) because it is an incumbent local exchange carrier, and the Commission actively regulates its rates.³

NYNEX Long Distance shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does

³In this case, Verizon Maine claims that no approval for a reorganization is necessary because NYNEX Long Distance already exists and it did not need approval when it was created because of an exemption from the reorganization approval requirement of section 708 granted to Verizon in 1993 in Docket No. 86-224. The exemption is general ("all future reorganizations"), but subject to a number of exceptions under which the company does need approval, including "a reorganization ... resulting in the creation of an affiliate that is intended to ... perform activities or services formerly or simultaneously performed by [Verizon] in the course of its operations in Maine. Verizon claims that at the time NYNEX Long Distance was created, it did not have such an intent. Nevertheless, in a recent affiliated interest stipulation we have approved for Saco River and Pine Tree in Docket No. 2002-145, approval is required (i.e., the exception to the exemption had been expanded) if the intent to provide such services is formed subsequently. Verizon has agreed to review the Stipulation in that case and discuss reform of its existing Stipulation.

Verizon Maine also claims that approval under section 707 (for contracts or arrangements between affiliated interests) is not necessary for the billing services and access that NYNEX Long Distance will purchase from Verizon Maine because the Stipulation in Docket No. 86-224 exempts all such transactions except for those in which an affiliate provides goods or services to Verizon Maine. The potential for abuse would appear to be present in either direction. (The potential for abuse is minimized or eliminated, however, if, as Verizon Maine represents is the case here, access is provided at tariffed rates and billing services are provided at the same rates as they are to non-affiliated interests.) The Saco River and Pine Tree (and other recent affiliated interest stipulations) apply to transactions in both directions. Verizon has also agreed to review this issue.

business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

NYNEX Long Distance shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 6.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of NYNEX Long Distance to provide interexchange service throughout the State of Maine;

2. Approve NYNEX Long Distance's proposed Terms and Conditions and Rate Schedules Original 18, and 20-107, as filed on April 12, 2002; and Original Page 19, as filed on June 17, 2002. Those Schedules shall be effective on the date of this Order.

3. Order that NYNEX Long Distance, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers;

4. Direct that NYNEX Long Distance shall notify each local exchange carrier in whose service area it intends to originate or terminate calls the date on which it will commence service if it will be providing facilities-based interexchange service, as defined in this Order;

5. Direct that NYNEX Long Distance shall notify the Commission and all local exchange carriers from which it obtains access services of any change in its underlying carrier within 30 days following the change if it is providing resold interexchange service. Any underlying carrier used by NYNEX Long Distance must have the authority to provide intrastate interexchange service in Maine. NYNEX Long Distance shall immediately inform the Commission and all local exchange carriers in the State of Maine from which NYNEX Long Distance will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time NYNEX Long Distance shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission;

6. Exempt NYNEX Long Distance from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue

and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

7. Exempt NYNEX Long Distance from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of or of any entity that owns more than 50% of. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), NYNEX Long Distance shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. NYNEX Long Distance shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, NYNEX Long Distance shall amend its rate schedules and terms and conditions to reflect any change in identity; and

8. Direct that NYNEX Long Distance shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine this 25th day of June 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTE: STAFF PERSON RESPONSIBLE FOR DOCUMENT, CHECK YES OR NO
(See General Counsel if in doubt)

Attach Notice of Rights to Review or Appeal? Yes _____ No _____
- If Yes (or nothing), attach Notice

Is document to be designated for publication? Yes _____ No _____
If Yes, type "This Document has been designated for publication" at bottom of page and
provide copies to all staff attorneys and librarian.

Does this document contain any confidential information?
Yes _____ No _____ (to be filled in by Author)

If yes, the secretary must prepare a redacted copy for web publication? Note: This
means that the confidential material must be deleted from the file and replaced with a
black background. Only this redacted file can be published to the web.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.